

# 10★Eight

In Service for Arkansas Law Enforcement



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## Dear Ten-Eight Reader:

At last year's Law-Enforcement Summit, many officers asked me about the possibility of supplying them with criminal-law reference manuals that would be portable and comprehensive. This sounded like a great idea, and I asked those attending the Summit for their input about the information and topics that should be included.

The result is a soon-to-be released, small pocket manual for law enforcement that has criminal-law references on topics as diverse as investigation and interrogation to domestic-violence issues and juvenile law to controlled substances and terrorism. I hope that you will find it to be useful and convenient. Thanks for everything you do to keep our citizens safe.

Sincerely,

Mike Beebe



## Helper's Highlight

Chief Jovey M.

Marshall,

Sulfur Springs

Police Department,

& Detective Lieutenant Lynn Waterworth,

Jonesboro Police Department

In this issue, we recognize Chief Jovey M. Marshall, a 15-year veteran of law enforcement and a soldier with the 142<sup>nd</sup> Field Artillery Division of the Arkansas National Guard. In April of 2003, Chief Marshall ran 267 miles in eight days, from Sulphur Springs to the Governor's Office in Little Rock. He embarked on this voluntary marathon to raise money to save a fire truck, to support American troops in Iraq, and to honor a friend felled by breast cancer. In June of 2003, Chief Jovey saved a handicapped boy from drowning in Sulphur Springs's Butler Creek. In addition to his feats on the police force, Chief

Jovey is a husband and the father of four sons ranging in age from 4 to 22. His 21-year-old son, Jovey Ryan Marshall, also a soldier, is currently serving our country in Iraq.

We also recognize Detective Lynn Waterworth, a 15-year veteran of the Jonesboro Police Department. To Detective Waterworth, law enforcement is a family affair, as her husband, Lyle, is a school-resource officer at Valley View School in Jonesboro. Waterworth regularly volunteers with her family to raise funds for Special Olympics and participates in the annual "Polar Bear Plunge." She also is active in raising funds for the Northeast Arkansas Diabetes Council. Detective Waterworth is the Chair for the Fraternal Order of Police's annual Easter Egg Hunt, which is one of the largest Easter events in the state. Detective Waterworth has two children, a daughter and son, who are also active in community service. As a native of Clay County, Arkansas, Detective Waterworth shares her heart, her family, and her time with her community and with her church, where she is the local director of a popular children's ministry.

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# Law Enforcement's Responsibilities toward People with Disabilities

By John Wyvill –Commissioner of Arkansas Rehabilitation Services

According to the 2000 U.S. Census, about twenty-four percent of Arkansans have a disability. As a result, it is only a matter of time before law-enforcement personnel will encounter people with disabilities during the performance of their duties. Contacts may range from a casual conversation, a traffic stop, or a possible arrest. Steps should be taken to ensure that each person is treated with dignity and that each encounter is handled sensitively, expertly, and professionally.

It is preferable not to refer to a person's limitation unless absolutely relevant. No one wants to be "labeled." Avoid referring to people with disabilities as "the disabled," "the retarded," etc. Avoid negative or sensational descriptions of a person's disability. Avoid the phrases, "suffers from" or "afflicted with," and don't use words such as "crippled," "deaf-and-dumb," "deformed," or "confined to a wheel chair."

**(1)** Speak directly to the person. Even if an interpreter or companion is present, address the person with a disability if he or she is the person of interest. If you have a question about what to do, what to say, or what assistance, if any, is needed, the person with the disability is your best resource.

**(2)** Always remember to identify yourself when meeting a person who is blind or visually impaired.

**(3)** Always ask before you assist someone with a disability. Pushing a wheelchair, moving items, taking items out of someone's hands or lap, or grabbing someone's arm or leg may be more disturbing than helpful. By asking directly, you give the person an opportunity to

decide if assistance is required or not. If the person does need help, listen carefully to any instructions.

**(4)** A person's adaptive equipment should be considered a part of the person and should be given "personal space." Do not touch or lean on a person's wheelchair, walker, or crutches. When talking to a person using a wheelchair for more than a few minutes, try to sit down so that you will be at eye level. Service animals are not pets and should not be petted, fed, talked to, or distracted while they are working.

Every person has dignity and should be treated with respect. A disability is a personal issue and those with disabilities may prefer not to make the origin or details of their disability the first topic of conversation.

The staff at Arkansas Rehabilitative Services is available to provide training or technical assistance (at no charge) on disability-related matters. You can contact John Wyvill at (501) 296-1604, or via e-mail at [jcwvill@ars.state.ar.us](mailto:jcwvill@ars.state.ar.us). Also, you may wish to contact Barry Vuletich at (501) 296-1626 or at [bmvuletich@ars.state.ar.us](mailto:bmvuletich@ars.state.ar.us).

John C. Wyvill is the Commissioner of Arkansas Rehabilitation Services (ARS), a state agency, which provides vocational and independent services, and enables people with physical, sensory, and mental disabilities to become more productive and independent members of society. Wyvill received a B.A. in Political Science from Hendrix College and graduated from University of Arkansas at Little Rock School of Law in 1991.

## Domestic Violence Conference Coming to North Arkansas College in Harrison

**April 26 and 27** Monday, April 26, 2004, 8:30a.m. - 4:00p.m. Yale University will present "Responding to Children Exposed to Violence." The program will provide insight into Yale's national model, designed to foster community collaboration between law enforcement, juvenile-justice administrators, and mental-health professionals when assisting children and families exposed to violence.

Tuesday, April 27, 2004, 8:30a.m. - 4:00p.m. "Domestic Violence Update for Mandated Reporters." This presentation features Melanie Bayne with the State Coalition for Domestic Violence and National Nurse Educator, Barb Bancroft.

Contact hours and 12 CLE hours are available for lawyers, law-enforcement officials, nurses, EMS staff, and social workers.

Register online at [www.northark.edu/ahec](http://www.northark.edu/ahec). For more information, please contact Deanne Blache MSN, RM toll-free 888-625-9930 or [dblach@northark.edu](mailto:dblach@northark.edu)

# Are Informational CHECKPOINTS Constitutional?

By Lauren Heil

In Illinois v. Lidster, the United States Supreme Court held that a checkpoint set up by the police for the purpose of seeking information about a recent crime does not necessarily violate the Fourth Amendment. Rather, the Court held that each such “informational roadblock” will be evaluated for its reasonableness in light of the circumstances. Lidster is significant because it allows police departments to establish roadblocks or checkpoints to seek motorists’ help in the investigation of a recent crime.

On August 23, 1997, just after midnight, a motorist struck and killed a 70-year-old bicyclist on a highway in Lombard, Illinois. About one week later, at nearly the same time and place, the local police set up a highway checkpoint to obtain more information about the accident. Police cars with flashing lights partially blocked the eastbound lanes of the highway, leading to lines of up to 15 cars in each lane. As each car approached the checkpoint, an officer would stop it for 10 to 15 seconds, ask

the occupants whether they had seen the accident, and hand them a flyer explaining the accident and requesting assistance. Robert Lidster swerved his minivan as he approached the checkpoint, nearly hitting an officer. After smelling alcohol on Lidster’s breath, an officer directed him to a side street for a sobriety test, and Lidster was arrested for driving under the influence of alcohol.

Lidster challenged his arrest, claiming that it was the result of a crime-control checkpoint, which, according to Indianapolis v. Edmond, violates the Fourth Amendment. The Supreme Court disagreed, noting that, unlike a crime-control checkpoint, whose purpose is to investigate whether a car’s occupants are committing a crime, an informational checkpoint merely seeks their cooperation in the investigation of a crime that is likely committed by someone else. The Court also concluded that informational checkpoints are less intrusive because they are brief, motorists are not asked any questions indicating they will be

accused of any crime, and the public usually wants to help the police solve a crime.

The Court then concluded that the informational checkpoint in Lidster was reasonable under the circumstances, determining that each motorist was stopped briefly, there was grave public concern in the investigation of the homicide, and that, because the police set up the checkpoint almost exactly a week later and at the same time and place as the accident, it was appropriately designed to find motorists who might have seen the accident. While the Court did not set forth specific procedures for informational checkpoints, they are likely to be reasonable under the Fourth Amendment if they are for the purpose of investigating a high-priority, recent crime, and if they are set up under conditions that offer the greatest chance of discovering witnesses or information that will aid the investigation with minimal interference of motorists.

## SUPREME COURT UPHOLDS .08 DWI LAW



Just before this issue went to press, the Arkansas Supreme Court upheld the validity of the 2001 amendment lowering the DWI threshold from .10 to .08. Across the state, defendants had raised challenges to the statute, and these challenges now have been rejected. The Court’s opinion can be found online at: <http://courts.state.ar.us/opinions/2004a/20040219/cr03-400.html>.



# Arkansas Supreme Court Okays Warrantless Searches of Garbage

By Vada Berger

More than 15 years ago, in California v. Greenwood, the United States Supreme Court held that a warrantless search of garbage left for collection on, or at the side of, a public street does not violate the Fourth Amendment. The Court held that there is not an expectation of privacy that society accepts as reasonable in this instance. Until recently, however, the Arkansas Supreme Court had not decided whether a warrantless search of garbage left at the curbside for collection violated the analogous provision of the Arkansas Constitution, Article 2, § 15. In the recent case of Rikard v. State, the Arkansas Supreme Court addressed the issue, holding that a warrantless search of garbage left at the curbside for collection did not violate the state constitution.

As the United States Supreme Court held in Greenwood, the Arkansas Supreme Court in Rikard held that citizens do not have a reasonable expectation of privacy in garbage left at the curbside for collection. The Court also held that municipal ordinances prohibiting scavenging, salvaging, and disturbing the contents of garbage containers did not change the analysis. Such ordinances, the Court concluded, were not intended to prohibit police officers from examining trash “in the performance of their duties[ ]” and to give citizens an expectation of privacy in their discarded trash. To conclude otherwise, the Court noted, would mean that “constitutional rights could vary from city to city[.]” In reaching its decision, the Court did not decide whether police officers could enter a suspect’s property to reach the garbage, noting that the lower court had credited the officers’ testimony that they had stayed in the street while searching the garbage.

Rikard gives police officers a powerful tool, particularly in cases of suspected drug-trafficking. Incriminating evidence seized from garbage left at the curbside for collection, as well as information gathered through surveillance of a suspect’s house, may well provide officers with probable cause to obtain a warrant to search the suspect’s house. Officers should err on the side of caution, however, and limit their searches of garbage to those circumstances in which they can reach it without entering the suspect’s property.



# Opinions of the ATTORNEY GENERAL

## Opinion No. 2003-369

**Question 1:** What are the powers, roles, and duties of the prosecuting attorney’s office and law-enforcement officials in regards to enforcing A.C.A. § 5-37-203 for secured creditors? **Question 2:** What constitutes a violation of A.C.A. § 5-37-203?

**Response to Questions 1 and 2:** Law-enforcement officers and prosecutors should enforce A.C.A. § 5-37-203, which criminalizes defrauding secured creditors by disposing of property subject to a security interest with the purpose of hindering that interest, in precisely the same way as they would any other felony statute—that is, by proceeding with enforcement upon a proper determination that probable cause exists to believe an individual has committed the offense.

**Question 3:** How should the prosecuting attorney and law-enforcement officials proceed under A.C.A. § 5-37-203 when the auto dealer and buyer enter into a contract that specifies that the vehicle being purchased cannot be taken out of the state without the permission of the auto dealer, who is financing the purchase, but the purchaser defaults by leaving the state and discontinuing payments? At what point does the situation described above become a criminal matter implicating A.C.A. § 5-37-203?

**Response to Question 3:** If a buyer removes property subject to a security interest from the state in derogation of a condition of purchase, the conduct would initially appear to constitute a breach of contract giving rise to a civil action for damages. If the buyer removes the property with the purpose of hindering the seller’s enforcement of the security interest, the removal would further appear to qualify as criminal conduct under A.C.A. § 5-37-203.

## Opinion No. 2003-372

**Question:** Is it permissible to allow a concealed-handgun-permit carrier to carry a handgun into a college campus but not into any of the campus buildings?

**Response:** A concealed-handgun-permit carrier may carry a handgun onto a college or university campus if the licensed carrier does not carry the handgun into any college or university “event” (whether the event is held inside a campus building or not), and if the carrier does not carry the handgun into any of the campus buildings. However, the institution can elect to prohibit the carrying of concealed handguns (even by licensed carriers) into all of its property by posting signs to that effect.

# Time Element Essential for Search Warrant

by Brent Gasper

An affidavit for a search warrant must set forth facts and circumstances establishing probable cause to believe that items subject to seizure will be found in the place to be searched. Arkansas Rule 13.1(b) of Criminal Procedure requires some mention of a time frame in an affidavit for a search warrant. This is crucial because a judge must know that criminal activity and/or contraband exist where the search is to be conducted at the time of the issuance of the warrant. The time element specifically needed is the time during which the criminal activity or contraband was observed. When an affidavit for a search warrant makes no mention of the time during which the alleged criminal activity occurred or the contraband was observed, it is considered insufficient to support the issuance of a search warrant, leading to the suppression of evidence seized in the resulting search. Additionally, an affidavit is insufficient when it mainly contains dates referring to the time when the affiant received a report, not when the criminal activity or contraband was observed.

Two recent cases highlight the importance and necessity of the time element in search-warrant affidavits. In Berta v. State, the Arkansas Court of Appeals reversed a conviction because the search-warrant affidavit did not contain any specific factual allegation as to **when** the contraband – items used to manufacture methamphetamine – was observed. The officer's conclusory statement that the items were "now

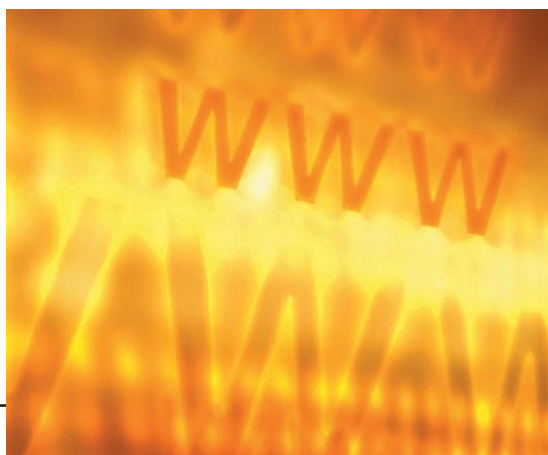
being concealed" and his supporting facts, still lacking time specificity, were held to be insufficient because the affidavit was silent as to the specific time when the items were observed.

Another recent case, George v. State, is very similar to Berta in that regard. George involved a suspect in possession of child pornography. In that case, the Arkansas Court of Appeals held that the affidavit merely stated the date when the informant, a minor and alleged victim, informed her mother of the allegations. The affidavit lacked any dates referring to when the alleged criminal activity or contraband was observed. Because the element of time was lacking in the affidavit, the search warrant was considered invalid, resulting in the conviction being reversed. The Attorney General's Office has petitioned the Arkansas Supreme Court to reverse this case because of the State's contention that time can be inferred from other information provided.

In sum, it is not enough for an officer applying for a search warrant to merely state that the contraband or evidence of criminal activity is "now being concealed" at the place to be searched. Specific allegations should be coupled with a specific time element as to when the contraband or criminal activity was observed. To do otherwise runs the risk of having the search warrant declared invalid and the fruits of the search suppressed.

## Web-Site Review OFFICER.COM

WWW.OFFICER.COM is a popular Web site serving the nation's law-enforcement community. It blends print, live, and interactive media to provide law-enforcement officials with resources and information, including national law-enforcement-agency news headlines, forums, chat rooms, and online directories. Officer.com was launched in 1996 and was founded by a police sergeant. Its traffic reflects its unique fare. More than 17 million viewers visit this site monthly. Surf to this Web site and check it out.



# Upcoming Law Enforcement Trainings

Attorney General Beebe is helping to host three upcoming law-enforcement trainings. On May 18 and 19, the Attorney General, in conjunction with the Internet Crimes Against Children Task Force, the National Center for Missing and Exploited Children, and the Pope County Sheriff's Office, will host two first-responder trainings. This specialized training program is aimed at the swift and successful investigation of reports involving missing-and-abducted children. It is designed to provide critical information to those officers and investigators who respond to a missing-child report. This training program will be held in two locations: on May 18, the training will be presented in Russellville at Arkansas Tech from 8:00 a.m.-4:30 p.m., and on May 19, the training will be presented at the North Little Rock Police Department's training facility from 8:00 a.m.-4:30 p.m.

On June 29-30, the Attorney General's Office will partner with the North Little Rock Police Department's Special Investigations Unit to present a two-day course called "Introduction to Investigating Computer Crimes." The training will be held from 8:30-4:30 both days. The NLRPD Unit has arrested more than 30 Internet predators since the Unit began investigating computer crimes in 2001.

Registration for the May 18 and 19 trainings is \$20 per officer. Registration for the June 29-30 trainings is \$50. These trainings are open to law-enforcement officials. Seating is limited at all trainings.

I want to register for the following training(s):

- ☐ May 18 First Responder Training, Russellville, AR
- ☐ May 19 First Responder Training, North Little Rock, AR
- ☐ June 29-30 Introduction to Investigating Computer Crimes, North Little Rock, AR

Name and Rank \_\_\_\_\_

Agency \_\_\_\_\_

Mailing Address \_\_\_\_\_

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Phone/ Fax/ E-mail \_\_\_\_\_

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